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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Justice Shri Satish K. Agnihotri

Writ Petition No. 4657 of 2005

Petitioner

Ashok Kumar Raj, S/o Late Shri Dasolal Raj, aged about 37 years, R/o Vill - Donasagar, Gram Panchayat Mohada, Tah. Kota, Dist. Bilaspur (CG).

Versus

Respondents :

1. The State of Chhattisgarh,
Through : The Secretary,
Department of Panchayat,
Mantralaya, D.K.S. Building,
Raipur (CG).
2. Chief Executive Officer, Janpad
Panchayat, Kota, Dist. Bilaspur
(CG),
3. Sarpanch, Gram Panchayat
Mohada, Through Manharan
Singh Markam, Gram Panchayat
Mohada Block, Kota, Dist.
Bilaspur (CG).

Present : Shri Bharat Rajput, counsel for the petitioner.
Smt. Anju Ahuja, Dy. Govt. Advocate for the State.
Shri Ravindra Agrawal, counsel for respondent No.3.

ORDER
(Passed on 9th April, 2007)

By this petition under Article 226/227 of the Constitution of India, the petitioner impugns the order dated 25-8-2005 (Annexure-P/2) whereunder he has been removed from the post of Panchayat Secretary.

2) The facts in nutshell are that the petitioner was appointed as Panchayat Secretary, Gram Panchayat Mohada on 2-11-1995 (Annexure-P/1). The petitioner received a notice dated 30-7-2005 (Annexure-P/3) on 3-8-2005 for giving reply on 4-8-2005 to initiate action against him and thereafter, without issuing proper charge sheet,

as envisaged under Rule 7 of the Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (for short "the Rules, 1999") the impugned order dated 25-8-2005 (Annexure-P/2) has been issued.

3) Learned counsel appearing for the petitioner submits that the order impugned, herein, is not in consonance with the provisions of the Rules, 1999, as no opportunity of hearing was afforded to the petitioner by issuing a charge sheet after framing definite charges on the basis of allegations and no enquiry was held.

4) Admittedly, the Village Panchayat, before passing the impugned termination order has not complied with the provisions of Rule 7 of the Rules, 1999. This Court in *Dhaluram Kosaria vs. State of C.G. & Others*¹, *Beegan Ram vs. State of C.G. & Others*² and *Prakash Chand Soni vs. State of C.G. & Others*³ has held that the non-compliance of the statutory provisions and denial of principles of natural justice tantamounts to infraction of not only the provisions of Rule 7 of the Rules, 1999 but the provisions of Article 311(2) of the Constitution of India also. The order of removal being penal in nature, visiting with civil consequences, cannot be passed without holding the enquiry in accordance with the elaborate provisions as prescribed in Rule 7 of the Rules, 1999.

5) It is thus clear that the respondents have not followed the statutory provisions of law before passing the impugned order.

6) In view of the foregoing, the petition deserves to be and is allowed. The impugned order Annexure-P/7 is quashed. No costs.

7) On the question of back wages, no foundation has been laid to establish the fact that whether the petitioner was gainfully employed elsewhere or not during this period. Even otherwise keeping in view

¹ 2006 (2) CGLJ 186

² 2006 LT (CG) 41

³ 2005 LT (CG) 151

that the termination order has been vitiated not on merit, but on account of non-compliance of the statutory provisions before terminating the services of the petitioner, 30% back wages would be sufficient in the interest of justice.

Sd/-
Satish K. Agnihotri
Judge